

HOUSE BILL 556

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2004 Regular Session
(4r1178)

ENROLLED BILL

-- *Health and Government Operations/Education, Health, and Environmental
Affairs* --

Introduced by Delegates Morhaim and ~~Boutin~~, Boutin, Hurson, Hammen,
Rudolph, Oaks, Murray, Benson, Mandel, Goldwater, Nathan-Pulliam,
Hubbard, Rosenberg, Pendergrass, and V. Turner

Read and Examined by Proofreaders:

Proofreader.

Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this
____ day of _____ at _____ o'clock, ____ M.

Speaker.

CHAPTER _____

1 AN ACT concerning

2 ~~Medical Records - Physician Orders for Life-Sustaining Treatment~~
3 ~~Health Care Decisions - "Patient's Plan of Care" Form - Communication of~~
4 ~~Patient Preferences~~

5 FOR the purpose of authorizing certain health care providers to prepare certain forms
6 under certain circumstances; requiring the Office of the Attorney General to
7 develop a "~~Physician Orders for Life-Sustaining Treatment~~ Patient's Plan of
8 Care" form that ~~documents certain treatment preferences of an individual~~
9 summarizes the plan of care for an individual; specifying that the form is
10 voluntary; requiring the form to be consistent with certain health care decisions
11 of certain individuals; providing that the form may be completed by a health
12 care provider under certain supervision; requiring the form to be signed by a
13 certain health care provider ~~and to contain a certain statement~~ under certain

1 ~~circumstances, to be signed by certain individuals, to include certain contact~~
 2 ~~information, to be dated, to contain certain statements, and to designate under~~
 3 ~~which conditions the form shall be reviewed or modified; requiring a health care~~
 4 ~~provider to comply with the form; requiring the Department of Health and~~
 5 ~~Mental Hygiene to print and distribute the form; requiring the Department, in~~
 6 ~~consultation with the Office of the Attorney General and certain other groups, to~~
 7 ~~adopt certain regulations; requiring the Office of the Attorney General, in~~
 8 ~~consultation with certain groups, to make a certain report to certain committees~~
 9 ~~of the General Assembly on or before a certain date review the forms as part of a~~
 10 ~~certain process; requiring the Office of the Attorney General to consult with~~
 11 ~~certain entities in developing the form; requiring certain facilities to offer certain~~
 12 ~~individuals the opportunity to prepare the form; and generally relating to the~~
 13 ~~"Physician Orders for Life Sustaining Treatment Patient's Plan of Care" form.~~

14 BY repealing and reenacting, without amendments,
 15 Article - Health - General
 16 Section 4-301(a) and (g), 5-608(a), and 5-609
 17 Annotated Code of Maryland
 18 (2000 Replacement Volume and 2003 Supplement)

19 BY repealing and reenacting, with amendments.
 20 Article - Health - General
 21 Section 5-602
 22 Annotated Code of Maryland
 23 (2000 Replacement Volume and 2003 Supplement)

24 BY adding to
 25 Article - Health - General
 26 Section 5-608.1 and 19-344(f)(5)
 27 Annotated Code of Maryland
 28 (2000 Replacement Volume and 2003 Supplement)

29 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
 30 MARYLAND, That the Laws of Maryland read as follows:

31 **Article - Health - General**

32 4-301.

33 (a) In this subtitle the following words have the meanings indicated.

34 (g) (1) "Medical record" means any oral, written, or other transmission in
 35 any form or medium of information that:

36 (i) Is entered in the record of a patient or recipient;

- 1 (ii) Identifies or can readily be associated with the identity of a
 2 patient or recipient; and
- 3 (iii) Relates to the health care of the patient or recipient.
- 4 (2) "Medical record" includes any:
- 5 (i) Documentation of disclosures of a medical record to any person
 6 who is not an employee, agent, or consultant of the health care provider;
- 7 (ii) File or record maintained under § 12-403(b)(13) of the Health
 8 Occupations Article by a pharmacy of a prescription order for drugs, medicines, or
 9 devices that identifies or may be readily associated with the identity of a patient;
- 10 (iii) Documentation of an examination of a patient regardless of
 11 who:
- 12 1. Requested the examination; or
- 13 2. Is making payment for the examination; and
- 14 (iv) File or record received from another health care provider that:
- 15 1. Relates to the health care of a patient or recipient received
 16 from that health care provider; and
- 17 2. Identifies or can readily be associated with the identity of
 18 the patient or recipient.

19 5-602.

20 (a) Any competent individual may, at any time, make a written advance
 21 directive regarding the provision of health care to that individual, or the withholding
 22 or withdrawal of health care from that individual.

23 (b) (1) Any competent individual may, at any time, make a written advance
 24 directive appointing an agent to make health care decisions for the individual under
 25 the circumstances stated in the advance directive.

26 (2) An owner, operator, or employee of a health care facility from which
 27 the declarant is receiving health care may not serve as a health care agent unless the
 28 person would qualify as a surrogate decision maker under § 5-605(a) of this subtitle.

29 (3) An agent appointed under this subtitle has decision making priority
 30 over any individuals otherwise authorized under this subtitle to make health care
 31 decisions for a declarant.

32 (c) (1) A written advance directive shall be dated, signed by or at the express
 33 direction of the declarant, and subscribed by two witnesses.

1 (2) (i) Except as provided in items (ii) and (iii) of this paragraph, any
2 competent individual may serve as a witness to an advance directive, including an
3 employee of a health care facility or physician caring for the declarant if acting in good
4 faith.

5 (ii) The health care agent of the declarant may not serve as a
6 witness.

7 (iii) At least one of the witnesses must be an individual who is not
8 knowingly entitled to any portion of the estate of the declarant or knowingly entitled to
9 any financial benefit by reason of the death of the declarant.

10 (d) (1) Any competent individual may make an oral advance directive to
11 authorize the providing, withholding, or withdrawing of any life-sustaining procedure
12 or to appoint an agent to make health care decisions for the individual.

13 (2) An oral advance directive shall have the same effect as a written
14 advance directive if made in the presence of the attending physician and one witness
15 and if the substance of the oral advance directive is documented as part of the
16 individual's medical record. The documentation shall be dated and signed by the
17 attending physician and the witness.

18 (e) (1) Unless otherwise provided in the document, an advance directive shall
19 become effective when the declarant's attending physician and a second physician
20 certify in writing that the patient is incapable of making an informed decision.

21 (2) If a patient is unconscious, or unable to communicate by any means,
22 the certification of a second physician is not required under paragraph (1) of this
23 subsection.

24 (f) (1) It shall be the responsibility of the declarant to notify the attending
25 physician that an advance directive has been made. In the event the declarant becomes
26 comatose, incompetent, or otherwise incapable of communication, any other person
27 may notify the physician of the existence of an advance directive.

28 (2) An attending physician who is notified of the existence of the advance
29 directive shall promptly:

30 (i) If the advance directive is written, make the advance directive or
31 a copy of the advance directive a part of the declarant's medical records; or

32 (ii) If the advance directive is oral, make the substance of the
33 advance directive, including the date the advance directive was made and the name of
34 the attending physician, a part of the declarant's medical records.

35 (3) IF THE CARE OF A DECLARANT IS TRANSFERRED FROM ONE HEALTH
36 CARE PROVIDER TO ANOTHER, THE TRANSFERRING HEALTH CARE PROVIDER MAY
37 PREPARE A "PATIENT'S PLAN OF CARE" FORM IN ACCORDANCE WITH § 5-608.1 OF
38 THIS SUBTITLE.

1 (4) IF THE TRANSFERRING HEALTH CARE PROVIDER PREPARES A
2 "PATIENT'S PLAN OF CARE" FORM IN ACCORDANCE WITH § 5-608.1 OF THIS SUBTITLE,
3 THE TRANSFERRING HEALTH CARE PROVIDER SHALL:

4 (1) TAKE REASONABLE STEPS TO ENSURE THAT THE "PATIENT'S
5 PLAN OF CARE" FORM IS CONSISTENT WITH ANY APPLICABLE DECISION STATED IN
6 THE ADVANCE DIRECTIVE OF A DECLARANT; AND

7 (II) TRANSMIT THE "PATIENT'S PLAN OF CARE" FORM TO THE
8 RECEIVING HEALTH CARE PROVIDER SIMULTANEOUSLY WITH THE TRANSFER OF
9 THE DECLARANT.

10 (g) It shall be the responsibility of the declarant to notify a health care agent
11 that the agent has been named in an advance directive to act on the declarant's behalf.

12 (h) Unless otherwise provided in the patient's advance directive, a patient's
13 agent shall act in accordance with the provisions of § 5-605(c) of this subtitle.

14 (i) The absence of an advance directive creates no presumption as to the
15 patient's intent to consent to or refuse life-sustaining procedures.

16 5-608.

17 (a) (1) Certified or licensed emergency medical services personnel shall be
18 directed by protocol to follow emergency medical services "do not resuscitate orders"
19 pertaining to adult patients in the outpatient setting in accordance with protocols
20 established by the Maryland Institute for Emergency Medical Services Systems in
21 conjunction with the State Board of Physicians.

22 (2) Emergency medical services "do not resuscitate orders" may not
23 authorize the withholding of medical interventions, or therapies deemed necessary to
24 provide comfort care or to alleviate pain.

25 (3) A health care provider, other than certified or licensed emergency
26 medical services personnel, may provide, withhold, or withdraw treatment in
27 accordance with an emergency medical services "do not resuscitate order" described in
28 paragraph (1) of this subsection if a health care provider sees either the order or a
29 valid, legible, and patient identifying emergency medical services "do not resuscitate
30 order" in bracelet form.

31 5-608.1.

32 (A) ~~THE OFFICE OF THE ATTORNEY GENERAL SHALL DEVELOP A "PHYSICIAN~~
33 ~~ORDERS FOR LIFE SUSTAINING TREATMENT~~ "PATIENT'S PLAN OF CARE" FORM TO
34 ~~DOCUMENT THE TREATMENT PREFERENCES OF AN INDIVIDUAL RELATED TO~~
35 SUITABLE FOR SUMMARIZING THE PLAN OF CARE FOR AN INDIVIDUAL, INCLUDING
36 THE ASPECTS OF THE PLAN OF CARE RELATED TO:

37 (1) THE USE OF LIFE-SUSTAINING PROCEDURES; AND

1 (2) TRANSFER TO A HOSPITAL ~~FROM A NONHOSPITAL SETTING;~~ AND

2 (3) ~~ANY OTHER MATTER CONSIDERED APPROPRIATE BY THE OFFICE OF~~
 3 ~~THE ATTORNEY GENERAL TO ACCOMPLISH THE PURPOSES OF THE "PHYSICIAN~~
 4 ~~ORDERS FOR LIFE-SUSTAINING TREATMENT" FORM.~~

5 (B) THE "PHYSICIAN ORDERS FOR LIFE-SUSTAINING TREATMENT PATIENT'S
 6 PLAN OF CARE" FORM IS VOLUNTARY AND SHALL BE CONSISTENT WITH:

7 (1) THE DECISIONS OF:

8 (I) THE PATIENT IF THE PATIENT IS A COMPETENT INDIVIDUAL;
 9 OR

10 (II) IF THE PATIENT IS INCAPABLE OF MAKING AN INFORMED
 11 DECISION, A HEALTH CARE AGENT OR SURROGATE DECISION MAKER AS
 12 AUTHORIZED BY THIS SUBTITLE; AND

13 (2) ANY ADVANCE DIRECTIVE OF ~~AN INDIVIDUAL~~ THE PATIENT IF THE
 14 PATIENT IS INCAPABLE OF MAKING AN INFORMED DECISION; ~~AND~~

15 (3) ~~THE DECISIONS OF A HEALTH CARE AGENT OR SURROGATE~~
 16 ~~DECISION MAKER AS AUTHORIZED BY THIS SUBTITLE.~~

17 (C) THE "PHYSICIAN ORDERS FOR LIFE-SUSTAINING TREATMENT PATIENT'S
 18 PLAN OF CARE" FORM:

19 (1) MAY BE COMPLETED BY A HEALTH CARE PROVIDER UNDER THE
 20 DIRECTION OF AN ATTENDING PHYSICIAN;

21 (2) IF THE ATTENDING PHYSICIAN HAS A REASONABLE BASIS TO
 22 BELIEVE THAT THE "PATIENT'S PLAN OF CARE" FORM SATISFIES THE
 23 REQUIREMENTS OF SUBSECTION (B) OF THIS SECTION, SHALL BE SIGNED BY THE
 24 ATTENDING PHYSICIAN; ~~AND~~

25 (3) SHALL BE SIGNED BY:

26 (I) THE PATIENT IF THE PATIENT IS A COMPETENT INDIVIDUAL;
 27 OR

28 (II) IF THE PATIENT IS INCAPABLE OF MAKING AN INFORMED
 29 DECISION, A HEALTH CARE AGENT OR SURROGATE DECISION MAKER AS
 30 AUTHORIZED BY THIS SUBTITLE;

31 (4) IF SIGNED BY THE PATIENT IN ACCORDANCE WITH ITEM (3)(I) OF
 32 THIS SUBSECTION, SHALL INCLUDE CONTACT INFORMATION FOR THE PATIENT'S
 33 HEALTH CARE AGENT;

34 (5) IF SIGNED BY A HEALTH CARE AGENT OR SURROGATE DECISION
 35 MAKER IN ACCORDANCE WITH ITEM (3)(II) OF THIS SUBSECTION, SHALL INCLUDE

1 CONTACT INFORMATION FOR THE HEALTH CARE AGENT OR SURROGATE DECISION

2 MAKER;

3 (6) SHALL BE DATED;

4 (7) SHALL INCLUDE A STATEMENT THAT THE FORM MAY BE REVIEWED,

5 MODIFIED, OR RESCINDED AT ANY TIME;

6 (8) SHALL DESIGNATE UNDER WHICH CONDITIONS THE FORM MUST BE

7 REVIEWED OR MODIFIED, INCLUDING PROMPTLY AFTER THE PATIENT BECOMES

8 INCAPABLE OF MAKING AN INFORMED DECISION; AND

9 (3) (9) SHALL CONTAIN A CONSPICUOUS STATEMENT THAT THE

10 ORIGINAL FORM SHALL ACCOMPANY THE INDIVIDUAL WHEN THE INDIVIDUAL IS

11 TRANSFERRED TO ANOTHER HEALTH CARE PROVIDER OR DISCHARGED; ~~AND~~

12 (4) ~~SHALL INCLUDE A STATEMENT THAT THE FORM CAN BE REVIEWED,~~

13 ~~MODIFIED, OR RESCINDED AT ANY TIME.~~

14 (D) (1) A HEALTH CARE PROVIDER SHALL, IN ACCORDANCE WITH THE

15 "PHYSICIAN ORDERS FOR LIFE SUSTAINING TREATMENT" FORM; SHALL REVIEW ANY

16 "PATIENT'S PLAN OF CARE" FORM RECEIVED FROM ANOTHER HEALTH CARE

17 PROVIDER AS PART OF THE PROCESS OF ESTABLISHING A PLAN OF CARE FOR AN

18 INDIVIDUAL.

19 (1) PROVIDE, WITHHOLD, OR WITHDRAW LIFE-SUSTAINING

20 PROCEDURES;

21 (II) ARRANGE FOR OR REFRAIN FROM ARRANGING FOR A

22 TRANSFER OF AN INDIVIDUAL TO A HOSPITAL; AND

23 (III) COMPLY WITH OTHER MEDICAL ORDERS ON THE FORM.

24 (2) A "PHYSICIAN ORDERS FOR LIFE-SUSTAINING TREATMENT" FORM

25 THAT CONTAINS AN ORDER THAT RESUSCITATION NOT BE ATTEMPTED SHALL BE

26 GIVEN THE SAME EFFECT AS AN EMERGENCY MEDICAL SERVICES "DO NOT

27 RESUSCITATE ORDER" AS SET FORTH IN § 5-608(A) OF THIS SUBTITLE.

28 (3) IF A "PHYSICIAN ORDERS FOR LIFE-SUSTAINING TREATMENT" FORM

29 CONFLICTS WITH AN EMERGENCY MEDICAL SERVICES "DO NOT RESUSCITATE

30 ORDER", THE EMERGENCY MEDICAL SERVICES "DO NOT RESUSCITATE ORDER"

31 SHALL BE GIVEN PRIORITY.

32 (E) THE DEPARTMENT SHALL PRINT AND DISTRIBUTE THE "PHYSICIAN

33 ORDERS FOR LIFE SUSTAINING TREATMENT" FORM DEVELOPED BY THE OFFICE OF

34 THE ATTORNEY GENERAL UNDER THIS SECTION.

35 (F) (E) THE DEPARTMENT SHALL ADOPT REGULATIONS IMPLEMENTING

36 THE PROVISIONS OF THIS SECTION IN CONSULTATION THE OFFICE OF THE

1 ATTORNEY GENERAL, IN DEVELOPING THE "PATIENT'S PLAN OF CARE" FORM IN
 2 ACCORDANCE WITH SUBSECTION (A) OF THIS SECTION, SHALL CONSULT WITH:

3 (1) ~~THE OFFICE OF THE ATTORNEY GENERAL~~ THE DEPARTMENT;

4 (2) RELIGIOUS GROUPS AND INSTITUTIONS WITH AN INTEREST IN
 5 END-OF-LIFE CARE; ~~AND~~

6 (3) ONE OR MORE REPRESENTATIVES FROM THE COMMUNITY OF
 7 INDIVIDUALS WITH DISABILITIES; AND

8 (3) (4) ANY OTHER GROUP THE ~~DEPARTMENT~~ OFFICE OF THE
 9 ATTORNEY GENERAL IDENTIFIES AS APPROPRIATE FOR CONSULTATION.

10 5-609.

11 (a) (1) A health care provider is not subject to criminal prosecution or civil
 12 liability or deemed to have engaged in unprofessional conduct as determined by the
 13 appropriate licensing authority as a result of withholding or withdrawing any health
 14 care under authorization obtained in accordance with this subtitle.

15 (2) A health care provider providing, withholding, or withdrawing
 16 treatment under authorization obtained under this subtitle does not incur liability
 17 arising out of any claim to the extent the claim is based on lack of consent or
 18 authorization for the action.

19 (b) A person who authorizes the provision, withholding, or withdrawal of
 20 life-sustaining procedures in accordance with a patient's advance directive or as
 21 otherwise provided in this subtitle is not subject to:

22 (1) Criminal prosecution or civil liability for that action; or

23 (2) Liability for the cost of treatment solely on the basis of that
 24 authorization.

25 (c) (1) The provisions of this section shall apply unless it is shown by a
 26 preponderance of the evidence that the person authorizing or effectuating the
 27 provision, withholding, or withdrawal of life-sustaining procedures in accordance
 28 with this subtitle did not, in good faith, comply with the provisions of this subtitle.

29 (2) The distribution to patients of written advance directives in a form
 30 provided in this subtitle and assistance to patients in the completion and execution of
 31 such forms does not constitute the unauthorized practice of law.

32 (d) An advance directive made in accordance with this subtitle shall be
 33 presumed to have been made voluntarily by a competent individual. Authorization for
 34 the provision, withholding or withdrawal of life-sustaining procedures in accordance
 35 with this subtitle shall be presumed to have been made in good faith.

1 19-344.

2 (f) (5) (I) A FACILITY SHALL OFFER A RESIDENT, UPON ADMISSION, THE
3 OPPORTUNITY FOR THE PREPARATION OF A "PATIENT'S PLAN OF CARE" FORM IN
4 ACCORDANCE WITH § 5-608.1 OF THIS ARTICLE.

5 (II) IF A FACILITY PREPARES A "PATIENT'S PLAN OF CARE" FORM IN
6 ACCORDANCE WITH SUBPARAGRAPH (I) OF THIS PARAGRAPH, THE FORM SHALL
7 REMAIN CONSPICUOUSLY IN THE FRONT OF A RESIDENT'S MEDICAL RECORDS.

8 ~~SECTION 2. AND BE IT FURTHER ENACTED, That the Office of the~~
9 ~~Attorney General, in consultation with the State Advisory Council on Quality Care at~~
10 ~~the End of Life, the Maryland Institute for Emergency Medical Services Systems, and~~
11 ~~other interested parties, shall:~~

12 ~~(a) study methods for reconciling the "Physician Orders for Life-Sustaining~~
13 ~~Treatment Form" developed under Section 1 of this Act, and the Emergency Medical~~
14 ~~Services "Do Not Resuscitate Order"; and~~

15 ~~(b) on or before January 1, 2005, report its findings and recommendations to~~
16 ~~the House Health and Government Operations Committee and the Senate Education,~~
17 ~~Health, and Environmental Affairs Committee, in accordance with § 2-1246 of the~~
18 ~~State Government Article.~~

19 SECTION ~~2.~~ 3. 2. AND BE IT FURTHER ENACTED, That this Act shall take
20 effect October 1, 2004.